

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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David Clapper
MR 5569
D-B-38
10745 Route 18
Albion, PA 16475-0002

July 16, 2018

Kevin F. McCarthy, Esquire
Right to Know Officer
Office of District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219

In re: Open Records Appeal

Dear Mr. Clapper and Mr. McCarthy:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On July 12, 2018, I received from Mr. Clapper an appeal of a denial of a Right To Know Request. That denial was from the Office of District Attorney of Allegheny County. In Mr. Clapper's request, he was seeking:

1. All documents relating to the above stated case (to include but not limited to: search warrant, inventory of seized items, affidavits of probable cause, updated docketing statement, criminal complaint, attorney notes, medical records, police report, ambulance report, victim written report, statements, witness statements, affidavits, exhibits, copies of surveillance videotape and the police officer report of what he viewed after viewing the surveillance tape) and transcripts during all hearings.

In denying the request, Mr. McCarthy relied upon 65 P.S. §67.708(b)(16).

As you both know, 65 P.S. §67.708 (a)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.

* * * *

(vi) A record that, if disclosed, would do any of the following:

- (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of an criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011). I must therefore deny the request. In passing, it is noted that a defendant pursuing a PCRA petition can request discovery pursuant to Pa.R.Crim.P. 902 (E).

Please be advised that pursuant to 65 P.S. §67.1302 you have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer